

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WAYNE KENNETH AUGÉ, II, M.D.,
Individually and as Trustee on Behalf of
Covalent Global Trust,

Plaintiff,

vs.

Civ. No. 14-1089 KG/SMV

STRYKER CORPORATION, and
HOWMEDICA OSTEONICS CORP.,

Defendants.

ORDER REGARDING USE OF “MODIFICATION AND IMPROVEMENTS” IN JURY
INSTRUCTIONS

At the Final Pretrial Conference on May 12, 2022, the parties discussed and debated whether it was appropriate to include the phrase “or were modifications or improvements to” with respect the flexible drill system at issue. The Court took the matter under advisement.

Paragraph 6 of the 2009 Royalty Agreement, labeled “Cooperation,” expressly requires COSPR and Dr. Augé to “consult and cooperate fully” with the Defendants “with respect to the development and design of Products *and potential modifications and improvements to the Products[.]*” (Doc. 178-5) at 3.

The Court notes that the requested phrase does not draw solely from the superseded confidentiality agreements, and further concludes the phrase will not unnecessarily confuse the jury. Based on this language in the operative agreement, the Court finds it is appropriate to include the phrase “or were modifications or improvements to” in the jury instructions, as requested by Plaintiff.

To the extent Defendants object to this language, the objection is overruled.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE